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IN THE

Supreme Court of The United States

OCTOBER TERM 1970

~~NO. 6744~~ 70-5082

LA VERNE CARTER, et al.,
Appellants (Plaintiffs below),

v.

WAYNE STANTON, et al.,
Appellees (Defendants below).

On Appeal from the United States District Court
for the Southern District of Indiana
Indianapolis Division

RESPONSE OF APPELLEE STANTON TO BRIEF FOR UNITED STATES AS AMICUS CURIAE

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Appellee Stanton welcomes the view of the government that Indiana State Welfare Regulation 2-402(b) falls within the state discretion accorded by the Social Security Act. (Amicus Curiae Brief 12, 30).

It is unfortunate, however, that the government succumbs to the same fallacy as have the claimants, in mistakenly treating the state regulations as an absolute minimum requirement for AFDC aid in the "continued

absence" situations. (Ibid 29). Apparently the posture of the government in this respect was adopted without careful analysis of either the regulation or the evidence of its application—and, of course, before receipt of the Stanton brief recounting the evidence.

The government is totally wrong in its notion that the regulation absolutely and rigidly requires a parental separation for at least six months before the departed parent can be considered continually absent from home. (Ibid 29). The defendant Stanton's brief explodes the government's error. The record presents numerous factual examples of AFDC benefits granted without awaiting the six-month period, some of those examples involving the parties to this litigation as well as the witnesses. (Stanton's Brief 6-8).

In view of the flexibility in the measure of "continued absence" as demonstrated in the brief for the defendant Stanton, the lack of substantiality of any constitutional or federal issue becomes obvious.

Therefore, the lower Court decision should be affirmed.

Respectfully Submitted,

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